

Introduced by Senator Cox

February 19, 2010

An act to amend Section 6501 of the Business and Professions Code, relating to professional fiduciaries.

LEGISLATIVE COUNSEL'S DIGEST

SB 1466, as introduced, Cox. Professional fiduciaries: definition.

Existing law requires a professional fiduciary, as defined, to be licensed by the Professional Fiduciaries Bureau within the Department of Consumer Affairs, and prohibits a person from holding himself or herself out as a professional fiduciary unless licensed. Existing law defines a professional fiduciary to include a person who acts as a trustee, agent under a durable power of attorney for health care, or agent under a durable power of attorney for finances, for more than three individuals, at the same time. Existing law provides that, for this purpose, (1) individuals related to the fiduciary shall not be counted, (2) all individuals related to each other shall be counted as one individual, and (3) all trustors who are related to each other shall be counted as one individual, and neither the number of trusts nor the number of beneficiaries of those trusts shall be counted.

This bill would, in addition, provide that an individual shall not be counted if the individual is a beneficiary of a fiduciary that is a corporation, unincorporated association, trust, or other entity that (1) has been in existence for at least 10 years, (2) is described in Section 501(c)(3) of the Internal Revenue Code, (3) is subject to the Supervision of Trustees and Fundraisers for Charitable Purposes Act, and (4) is among the types of trusts, unitrusts, or funds as described in specified sections of the Internal Revenue Code.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 6501 of the Business and Professions
2 Code is amended to read:
3 6501. As used in this chapter, the following terms have the
4 following meanings:
5 (a) “Act” means this chapter.
6 (b) “Bureau” means the Professional Fiduciaries Bureau within
7 the Department of Consumer Affairs, established pursuant to
8 Section 6510.
9 (c) “Client” means an individual who is served by a professional
10 fiduciary.
11 (d) “Department” means the Department of Consumer Affairs.
12 (e) “Licensee” means a person who is licensed under this chapter
13 as a professional fiduciary.
14 (f) (1) “Professional fiduciary” means a person who acts as a
15 conservator of the person, the estate, or person and estate, or
16 guardian of the estate, or person and estate, for two or more
17 individuals at the same time who are not related to the professional
18 fiduciary or to each other.
19 (2) “Professional fiduciary” also means a person who acts as a
20 trustee, agent under a durable power of attorney for health care,
21 or agent under a durable power of attorney for finances, for more
22 than three individuals, at the same time.
23 In counting individuals under this paragraph to determine
24 whether a person is a professional fiduciary:
25 (A) Individuals who are related to the fiduciary shall not be
26 counted.
27 (B) All individuals who are related to each other shall be counted
28 as one individual.
29 (C) All trustors who are related to each other shall be counted
30 as one individual, and neither the number of trusts nor the number
31 of beneficiaries of those trusts shall be counted.
32 (D) *An individual shall not be counted if the individual is a*
33 *beneficiary of a fiduciary that is a corporation, unincorporated*
34 *association, trust, or other entity that meets all the following*
35 *requirements:*

- 1 (i) *Has been in existence for at least 10 years.*
2 (ii) *Is described in Section 501(c)(3) of the Internal Revenue*
3 *Code.*
4 (iii) *Is subject to the Uniform Supervision of Trustees for*
5 *Charitable Purposes Act (Article 7 (commencing with Section*
6 *12580) of Chapter 6 of Part 2 of Division 3 of Title 2 of the*
7 *Government Code).*
8 (iv) *Is an entity described in subclause (I), (II), (III), or (IV):*
9 (I) *A charitable remainder annuity trust or charitable remainder*
10 *unitrust described in Section 664(d) of the Internal Revenue Code.*
11 (II) *A charitable lead annuity trust or charitable lead unitrust*
12 *described in Section 2522(c)(2)(B) or Section 2055(e)(2)(B) of the*
13 *Internal Revenue Code.*
14 (III) *A pooled income fund described in Section 642(c)(5) of*
15 *the Internal Revenue Code.*
16 (IV) *A trust that does not provide for distributions based on the*
17 *individual's personal needs, such as needs for physical health,*
18 *food, clothing, shelter, or personal care.*
19 (3) *For purposes of this subdivision, "related" means related by*
20 *blood, adoption, marriage, or registered domestic partnership.*
21 (4) *"Professional fiduciary" does not include any of the*
22 *following:*
23 (A) *A trust company, as defined in Section 83 of the Probate*
24 *Code.*
25 (B) *An FDIC-insured institution, or its holding companies,*
26 *subsidiaries, or affiliates. For the purposes of this subparagraph,*
27 *"affiliate" means any entity that shares an ownership interest with,*
28 *or that is under the common control of, the FDIC-insured*
29 *institution.*
30 (C) *Any public agency, including the public guardian, public*
31 *conservator, or other agency of the State of California or of a*
32 *county of California or any regional center for persons with*
33 *developmental disabilities as defined in Section 4620 of the*
34 *Welfare and Institutions Code.*
35 (D) *A person employed by an entity or agency described in*
36 *subparagraph (A), (B), or (C), or subparagraph (D) of paragraph*
37 *(2) who is acting within the course and scope of that employment,*
38 *and a public officer of an agency described in subparagraph (C)*
39 *acting in the course and scope of official duties.*

1 (E) Any person whose sole activity as a professional fiduciary
2 is as a broker-dealer, broker-dealer agent, investment adviser, or
3 investment adviser representative registered and regulated under
4 the Corporate Securities Law of 1968 (Division 1 (commencing
5 with Section 25000) of Title 4 of the Corporations Code), the
6 Investment Advisers Act of 1940 (15 U.S.C. Sec. 80b-1 et seq.),
7 or the Securities Exchange Act of 1934 (15 U.S.C. Sec. 78a et
8 seq.), or involves serving as a trustee to a company regulated by
9 the Securities and Exchange Commission under the Investment
10 Company Act of 1940 (15 U.S.C. Sec. 80a-1 et seq.).
11 (g) “Committee” means the Professional Fiduciaries Advisory
12 Committee, as established pursuant to Section 6511.